

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, v. QWEST CORPORATION, Respondent.	DOCKET NO. FCU-02-22 (C-02-334)
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**ORDER DENYING PETITION FOR PROCEEDING
TO IMPOSE CIVIL PENALTIES**

(Issued April 16, 2003)

On December 6, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties pursuant to Iowa Code § 476.103, asking that the Board review the proposed resolution issued in C-02-344, involving Qwest Corporation (Qwest), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which are a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

By letter dated September 25, 2002, Mari J. Molseed of West Union filed a complaint with the Board against Qwest. Ms. Molseed alleged that in late May 2002, she directed Qwest to change her long distance service, both interLATA and intraLATA, from MCI to AT&T. However, MCI billings continued to appear on her Qwest bills she received in July, August, and September. When she inquired of Qwest regarding the MCI charges, she was assured the change to AT&T had been completed, but the MCI charges continued to appear.

Qwest responded to the complaint on October 8, 2002, stating that its records showed a May 2002 request from AT&T to change Ms. Molseed's interLATA service to AT&T, which was processed but was later reversed when a change of address was processed. Qwest's records showed a second request from AT&T, in July 2002, to change Ms. Molseed's interLATA service to AT&T, which was also processed. Qwest credited the customer's account for \$17.28 in MCI plan charges and for \$15 in preferred carrier change charges. MCI responded in a similar manner.

On November 22, 2002, Board staff issued a proposed resolution describing these events and proposing that the credits offered by Qwest and MCI represented a fair resolution of the situation. No party other than the Consumer Advocate has challenged the staff's proposed resolution.

Consumer Advocate argues that with respect to the customer's interLATA service, Qwest violated Iowa Code § 476.103 by failing to execute the customer's requested service change until at least one month after the customer made the request. With respect to the customer's intraLATA service, Consumer Advocate

argues that Qwest and Ms. Molseed disagree regarding the substance of her requested changes in her long distance service and that the Board should, therefore, set the matter for hearing to determine whether Qwest also violated § 476.103 with respect to these services.

On December 23, 2002, Qwest filed a response and a motion to dismiss Consumer Advocate's petition. Qwest argues that it implemented every change submitted to it by the customer or AT&T in a timely manner. Qwest states that the customer contacted Qwest on May 28, 2002, to terminate service at one address and re-establish service at another address, without authorizing Qwest to implement a change in her interLATA or intraLATA services. Instead, the customer requested the same service features at the new address as she was receiving at the initial address. The change was scheduled for June 3, 2002.

On May 31, 2002, AT&T processed a carrier-initiated change designating AT&T as the authorized carrier for the customer's interLATA long distance calls only and Qwest made the change on the same date.

However, on June 3, 2002, Qwest installed service at the customer's new address as previously directed by the customer, that is, using the same interLATA and intraLATA carrier as the customer had been using on May 28, 2002, when the service change was ordered. At the same time, Qwest terminated service at the original address, including both long distance carriers.

On July 3, 2002, AT&T processed a carrier-initiated change directing Qwest to change the interLATA service at the new address to AT&T. This change was also

processed, but the customer's intraLATA service remained with MCI because no change order had been submitted for that service.

Finally, on September 24, 2002, the customer contacted Qwest to initiate a change for the intraLATA service at her new address, which Qwest processed on September 25, 2002.

Qwest argues that it correctly processed each of the customer's service change requests in a timely manner. Qwest argues that even though the customer's telephone number did not change when the customer moved, the customer terminated service at the old address and started a new service at the new address, and the May 31, 2002, change of interLATA service providers did not apply to the new address.

Finally, Qwest argues that Consumer Advocate's petition should be dismissed because Qwest implemented every authorized service change in a timely manner and there are not grounds for additional or further investigation or any allegation that the staff's proposed resolution was inadequate.

On January 6, 2003, Consumer Advocate filed a reply to Qwest's answer and motion to dismiss, arguing that § 476.103 does not require that Consumer Advocate show that there are reasonable grounds for further investigation; if the company is given notice and opportunity for hearing and the Board finds that the anti-slamming statute has been violated, civil penalties are appropriate. Therefore, Consumer Advocate concludes, slamming violations should be processed under § 476.103 and civil penalties should be assessed for every instance of slamming.

The Board does not agree with Consumer Advocate's analysis of § 476.103. Under Consumer Advocate's approach, every single alleged slamming case would be the subject of a civil penalty proceeding, regardless of the facts. This would not be an efficient use of the limited resources available to the Board and the parties and would render the Board's informal complaint process meaningless, contrary to the legislative intent reflected in § 476.103(3)"e" and "g."

Many slamming cases, like this one, appear to be the result of inadvertent errors that will not be deterred by civil penalties; in such cases, the appropriate resolution is to make the customer whole (since the errors are clearly not the customer's) at the expense of the carrier that committed the errors. Consumer Advocate's proposal would amount to imposing a strict liability standard on all carriers for all unauthorized changes in service, even if there was no reasonable action the carrier could have implemented in order to avoid the unauthorized change. The Board does not believe that the Legislature intended to create a strict liability standard.

Instead, the Board finds that a formal proceeding to consider civil penalties should only be initiated when there are reasonable grounds for further investigation, for example, when there is some reason to believe that staff's proposed resolution should be revised or additional penalties should be imposed. In the absence of such a reason, it would be a waste of resources to conduct a formal proceeding. Therefore, any petition for formal proceedings should include a description of how and why the proposed resolution should be changed, a statement of the particular

reasons that additional penalties should be imposed, or some other specific allegation to support the general statement that there are reasonable grounds for further investigation.

Based on the circumstances described above and Consumer Advocate's request, the Board will deny Consumer Advocate's petition to docket this matter as a formal complaint proceeding.

IT IS THEREFORE ORDERED:

The "Request For Formal Proceeding" filed on December 6, 2002, by the Consumer Advocate Division of the Department of Justice is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 16th day of April, 2003.